DOCUMENT RESUME

ED 080 441 SO 006 156

AUTHOR Cooper, Sidney H.
TITLE The Supreme Court in American Life. Social Studies: 6448.05.
INSTITUTION Dade County Public Schools, Miami, Fla.
PUB DATE 71
NOTE 54p.; Authorized Course of Instruction of the Quinmester Program.

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS Civics; Civil Liberties; *Constitutional History; Curriculum Guides; Economics; Elective Subjects; Federal Court Litigation; Federal Courts; Learning Activities; Secondary Grades; *Social Studies Units; *Supreme Court Litigation; Supreme Courts; United States History
IDENTIFIERS Florida; *Quinmester Program

ABSTRACT

Tenth through twelfth grade students study the changing role of the Supreme Court from John Jay to the present in this elective political and economic studies course. Included is an historical analysis of rulings, and the impact of the Supreme Court on American life today. Course goals are for the student to: 1) locate the constitutional authority of the Supreme Court; 2) interpret the significant contribution of "Judicial Review" to our check and balance system; 3) examine the court's decisions on federal-state issues and determine their effect on federalism; 4) evaluate the role of the court in resolving the conflict between government regulation of business vs. laissez-faire; 5) critically examine the fourteenth amendment and note how it has been used as a legal vehicle to transfer federal judicial standards upon state courts; and, 6) examine the effect of "decisional law" upon individual rights and liberties. Each goal is also broken down into a focus, objective, and learning activity section. (Author/OPH)

FILMED FROM BEST AVAILABLE COPY

ED 080441

50

AUTHORIZED COURSE OF INSTRUCTION FOR THE QUINMESTER PROGRAM

S0006/56

SOCIAL STUDIES

THE SUPREME COURT IN

AMERICAN LIFE

6448.05
6446.03
6416.40

DADE COUNTY PUBLIC SCHOOLS

DIVISION OF INSTRUCTION • 1971

ED 080441

SOCIAL STUDIES

THE SUPREME COURT IN AMERICAN LIFE

6448.05
6446.03
6416.40

by

Sidney H. Cooper

for the

Division of Instruction
Dade County Public Schools
Miami, Florida
1971

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

DADE COUNTY SCHOOL BOARD

Mr. William Lehman, Chairman
Mr. G. Holmes Braddock, Vice-Chairman
Mrs. Ethel Beckham
Mrs. Crutcher Harrison
Mrs. Anna Brenner Meyers
Dr. Ben Sheppard
Mr. William H. Turner

Dr. E. L. Whigham, Superintendent of Schools
Dade County Public Schools
Miami, Florida 33132

Published by the Dade County School Board

Copies of this publication may be obtained through

Textbook Services
2210 S. W. Third Street
Miami, Florida 33135

INTRODUCTION

This course of study was written as a part of a total effort to revise curriculum to fit the quinmester administrative organization of schools. The materials and information in this guide are meant to be neither all-inclusive nor prescriptive; but rather, an aide to teachers as they plan instructional programs, taking into account student needs and characteristics, available resources, and other factors.

The major intent of this publication is to provide a broad framework of goals and objectives, content, teaching strategies, class activities, and materials all related to a described course of study. Teachers may then accept the model framework in total or draw ideas from it to incorporate into their lessons.

The guide is divided into 1) a broad goals section, 2) a content outline, 3) objectives and learning activities, and 4) materials. The first section provides descriptive and goal-oriented information for the teacher; "indicators of success" refers to suggested prerequisite or corequisite experiences. The content outline illustrates, in general terms, the scope and major subdivisions of the course. The objectives and learning activities section, hopefully, provides a total picture of the concept or main idea and specific behavioral objectives for a set of given learning activities. The materials section of the guide lists resources in four categories: essential textual or other material; alternate classroom materials to use in place of or in addition to the aforementioned; supplementary teacher resources; and supplementary student resources. The appendix may include other material appropriate for a specific course: e.g., pretests, readings, vocabulary, etc.

Anyone having recommendations relating to this publication is urged to write them down and send to : Social Studies Office, Room 306, Lindsey Hopkins, A-1.

James A. Fleming
Social Studies Consultant

COURSE DESCRIPTION: THE CHANGING ROLE OF THE SUPREME COURT FROM JOHN JAY TO THE PRESENT, ANALYZED THROUGH SELECTED MAJOR DECISIONS. INCLUDES A HISTORICAL ANALYSIS OF RULINGS AND THE IMAPCT OF THE SUPREME COURT ON AMERICAN LIFE TODAY.

COUSTER: POLITICAL AND ECONOMIC STUDIES

GRADE LEVEL: 10-12

COURSE STATUS: ELECTIVE

INDICATORS OF SUCCESS: NONE

COURSE RATIONALE: It is the intent of this course to help students appreciate and understand the unique position of the Court and the dynamics of "decisional law." And it is hoped it will stimulate the student to continue following the Court's activities as it contributes to a changing American society.

COURSE GOALS:

1. THE STUDENT WILL LOCATE THE CONSTITUTIONAL AUTHORITY OF THE SUPREME COURT.

2. THE STUDENT WILL INTERPRET THE SIGNIFICANT CONTRIBUTION OF "JUDICIAL REVIEW" TO OUR CHECK AND BALANCE SYSTEM.

3. THE STUDENT WILL EXAMINE THE COURT'S DECISIONS ON FEDERAL-STATE ISSUES AND DETERMINE THEIR EFFECT ON FEDERALISM.

4. THE STUDENT WILL EVALUATE THE ROLE OF THE COURT IN RESOLVING THE CONFLICT BETWEEN GOVERNMENT REGULATION OF BUSINESS VS. LAISSEZ-FAIRE.

5. THE STUDENT WILL CRITICALLY EXAMINE THE FOURTEENTH AMENDMENT AND NOTE HOW IT HAS BEEN USED AS A LEGAL VEHICLE TO TRANSFER FEDERAL JUDICIAL STANDARDS UPON STATE COURTS.

6. THE STUDENT WILL EXAMINE THE EFFECT OF "DECISIONAL LAW" UPON INDIVIDUAL RIGHTS AND LIBERTIES.

COURSE CONTENT OUTLINE:

I. The Origin of Judicial Power

- A. Article III of the United States Constitution
- B. Judicial Review

II. Federal-State Issues (1789-1856)

- A. State constitutional powers
  - 1. Amendments 9,10, and 11
  - 2. State Police Powers
- B. Federal Constitutional Powers
  - 1. Article I, Section 8
  - 2. Article VI, Section 2
  - 3. Fourteenth Amendment

III. "Decisional Law" with regard to the control of business and public welfare

- A. Control of monopolies
- B. Labor Regulations
- C. Public Welfare

IV. The effect of "Decisional Law" on individual rights and liberties

- A. Freedom of Speech
- B. Freedom of the Press
- C. Procedural Due Process
  - 1. Self-Incrimination
  - 2. Search and Seizure
  - 3. The Right to Counsel
- D. Substantive Due Process
  - 1. Freedom of Religion
  - 2. Religion in Education
  - 3. Race Discrimination: Equal Protection of the Law
    - a. Education
    - b. Housing
    - c. Interstate Commerce

GOAL 1: THE STUDENT WILL LOCATE THE CONSTITUTIONAL AUTHORITY OF THE SUPREME COURT.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
THE ORIGIN OF JUDICIAL POWER AND ITS SIGNIFICANCE.	The student will be able to locate the constitutional authority of the Supreme Court and interpret the significance of that authority.	1. For an introductory statement you could explain to the class that governments represent "power centers" in a society. And that all governments exercise three functions: legislative, executive, and judicial. In our government these powers were defined and restricted in our Constitution. Why? a. Make available a copy of the United States Constitution to each student. b. Ask students to examine the first three Articles for the general areas of concern and then have them rationalize why the framers of the Constitution established the following order of precedent: Article I (Legislative) Article II (Executive) Article III (Judicial) c. Draw the students attention specifically to Article III, Section 1 and ask what court does the Constitution itself establish. d. What kind of courts may Congress establish? How is the term "inferior" used here? e. What is the significance of not having their salary diminished? (NOTE: it can only be increased at the discretion of Congress and during inflationary periods this has been used as a whip) f. In a legal dictionary have students look up the following terms: Jurisdiction; Original jurisdiction; appellate jurisdiction; exclusive jurisdiction; concurrent jurisdiction. g. When you think the terms are understood have the student find (in Article III) what kind(s) of jurisdiction is constitutionally provided for, but that the appellate jurisdiction lies with Congress and has been used to restrain the Court in the past (Ex part McCardle, 7 Wall. 566:1869) and may be used in the future. This is a very significant legislative check since approximately 90% of the cases heard by the Court comes under its appellate jurisdiction.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
		h. Show the filmstrip This Honorable Court: The Supreme Court of the United States from Guidance Associates; Harcourt, Brace and World #C-417. (Review first and prepare highlight questions) i. At this point the teacher may make an oral or written evaluation of objective A. 2. Show related films: Supreme Court (10' b/w rental); March of Time). Supreme Court, The (9' b/w Dade County #1-00453).

GOAL 2: THE STUDENT WILL INTERPRET THE SIGNIFICANT CONTRIBUTION OF "JUDICIAL REVIEW" TO OUR CHECK AND BALANCE SYSTEM.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
JUDICIAL REVIEW	A. In regard to the concept of Judicial Review the students will determine its origin and its significance.	1. Have students examine Article III, Section 2, Clause 1 and see if they can find an <u>implicit</u> constitutional basis for judicial review. (NOTE: the clause extends federal judicial power to all cases under the Constitution. This may offer the Constitutional basis for the Supreme Court to declare acts of the President or Congress unconstitutional.) 2. Examine Article VI, Section 2 (The Supreme Law of the Land) with the students. Blend this concept with the one above; the students should then be able to see the constitutional foundation for the Courts assumption of judicial review. 3. Instruct students how to "brief" a case. You may suggest an outline such as the following: a. Historical background (essential facts) b. The legal question(s) or issue(s) involved c. The majority opinion or rationalization of the Court d. Concurring opinion(s) if any e. Dissenting opinion(s) if any f. Your evaluation of the effect of this decision on our society -- our legal system 4. Provide students with copies of <u>Marbury v. Madison</u> (1803). This can be found in almost any case book. Examine with the class the genesis of the case and the questions the Court considered, i.e., 1. Has the applicant a right to the commission he demands? (yes) 2. If the right has been violated, do the laws of the United States afford him a remedy? (yes) 3. Is this remedy a <u>mandamus</u> issuing from this Supreme Court? (no) NOTE: This was the first time the Supreme Court declared an act of Congress unconstitutional because it attempted to enlarge the original jurisdiction of the Supreme Court which would be in contradiction with Article VI. Be sure students understand what a writ of mandamus is.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
	(cont.)	5. Have a student "brief" Dred Scott v. Sanford (1857). NOTE: Contrary to popular opinion the Supreme Court does not declare acts of Congress unconstitutional very often. Dred Scott was 54 years after Marbury v. Madison, and since Marbury through 1967 only 79 acts of Congress have been declared unconstitutional. 6. Have a student "brief" Fletcher v. Peck (1810). NOTE: In this case the Court for the first time established the right to review the acts of a state legislature. 7. Have a student "brief" or the class may examine together (depending on materials available) Martin v. Hunter's Lessee (1816). NOTE: In this case the decision of a state supreme court was overturned.
	B. The student will express his understanding of "Judicial Supremacy" in contrast to "Legislative Supremacy" as found in countries that use a parliamentary system of government.	QUESTIONS FOR STUDY AND DISCUSSION: 1. Without Judicial Review would our check and balance system be the same? Explain. 2. Our Constitution has grown in many ways. What has expanded it more, formal amendments or Court decisions? Support your conclusions. 3. Why can't the high court in England overrule Parliament? 4. Why do you think Americans allow five appointed men (Supreme Court) to over-rule the law-making power of our elected representatives (Congress)? 5. Of the three branches of government the Judiciary is the most passive. Agree or disagree. Suggested Source Readings: Bartholomew, Paul C. Leading Cases on the Constitution. New Jersey: Littlefield, Adams & Co., 1968. Mason, Alpheus T. and Beany. William M. American Constitutional Law. New Jersey: Prentice-Hall, Inc., 1964. (Chapter 2)

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
		Goldberg, George. The Supreme Court in American Life: The Uses and Abuses of Judicial Review. Massachusetts: D.C. Heath & Co., 1970. James, Leonard F. The Supreme Court in American Life. New Jersey: Scott, Foresman and Co., 1964. (pp. 11-41) McCloskey, Robert G. The American Supreme Court. Chicago: The University of Chicago Press, 1960. (chapters 1 & 2)

GOAL 3: THE STUDENT WILL EXAMINE THE COURT'S DECISIONS ON FEDERAL-STATE ISSUES AND DETERMINE THEIR AFFECT ON FEDERALISM.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
NATION-STATE ISSUES (1789-1865)	Through case studies the student will evaluate the effect of the Court's decisions on our federal system.	1. Have students review Amendments 9, 10, 11 of the U.S. Constitution and offer their conclusions as to the implications of power distribution for the nation-state. 2. Examine the Commerce clause Article I, Section 8, Clause 3 and evaluate the Courts definition and its effect on federalism (this topic is worthy of a research paper). 3. Have individual reports or class assignments on the following cases. At the conclusion of each determine how the decision affected federalism. Brown v. Maryland, 12 Wheaton 419 (1827) Chisholm v. Georgia, 2 Dallas 419 (1793) Cohens v. Virginia, 6 Wheaton 264 (1821) Cooley v. The Board of Wardens of the Port of Philadelphia, 12 Howard 299 (1851) Gibbons v. Ogden, 9 Wheaton (1824) McCulloch v. Maryland, 4 Wheaton 316 (1819) 4. If you can secure the recordings, Supreme Court Cases (series 1 & 2), from (eav Lexington) Educational Audio Visual, Inc., Pleasantville, New York, have the students listen to the appropriate cases. These recordings could be used to augment other learning experiences or as a primary source of information. The teacher may supply a ditto outline of the"brief" (page 2), and have the students fill in the outline. If possible it would be better to have the recordings taped for this affords better control for play and replay. 5. If available you may use transparencies from AEVAC such as, Key Supreme Court Decisions, Part 1. 6. You might ask students to compare the "nationalism" of the Marshall court to that of the Taney court. 7. Show film, John Marshall, 20'BW, #1-12466.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
	(cont.)	Suggested Source Readings: Bartholomew, Paul C. Leading Cases on the Constitution. New Jersey: Littlefield, Adams & Co., 1968. (paperback) Corwin, E.S. The Constitution and What it Means Today. 12th rev. ed., New Jersey: Princeton University Press, 1958. Johnson, Gerald W. The Supreme Court. New York: William Morrow & Co., 1962. (Chapter 3) Mason, Alpheus T. and Beany, William M. American Constitutional Law. New Jersey: Prentice-Hall, Inc., 1964. (Chapter 4) McCloskey, Robert G. The American Supreme Court. Chicago: University of Chicago Press, 1960. (Chapters 3 & 4)

GOAL 4: THE STUDENT WILL EVALUATE THE ROLE OF THE COURT IN RESOLVING THE CONFLICT BETWEEN REGULATION OF BUSINESS vs. LAISSIZ-FAIRE.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
THE EVOLUTION OF "DECISIONAL LAW" WITH REGARD TO THE CONTROL OF BUSINESS AND PUBLIC WELFARE. (1866-1937)	A. The student will analyze the development of "decisional law" on the control and regulation of business. (1866-1937)	1. Due to the scope of the subject you may want to divide the class into committees, and assign a selection of cases to each. It may be best to keep the committee size down to four and require all committee members to act as a panel when they report to the class. This will eliminate abdicating the committees' responsibility to the reporter. 2. Discuss and examine together with the class the 14th amendment. (If you have the AEVAC Transparencies on Constitutional Amendments see Part 1 for Amendment XIV) a. How it provides the vehicle for the Court to apply federal standards to the states i.e., the first eight amendments. b. The dual concept of "due process" - procedural and substantive. c. Discuss the significance of the "equal protection" clause and the "privileges-and-immunities" clause. And note their use and/or disuse with regard to the cases in this section. d. Note how the Court was reluctant to use this power during most of the period 1866-1937. (the practice of judicial restraint.) e. Note how the "due process" clause of the 14th Amendment was used to protect the business interest at this time. At a later period you will note how this clause is used to protect individual rights. 3. Discuss and examine the implicit "police powers" of the states. a. welfare c. morals b. safety d. health NOTE: everyone of these powers have been limited by national intrusion 4. Aside from other sources students should have access to a case book for basic reference throughout the course. (i.e., Paul C. Bartholomew, Leading Cases on the Constitution. New Jersey: Littlefield, Adams & Co., 1968 (paperback).

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	5. Through case studies the student should examine the conservative nature of the Court and its early laissez-faire approach. The following are some selected cases which the student committees could consider. Slaughter-House Cases, 16 Wallace 36 (1873) Topics for discussion and study: a. In the above case was the 14th Amendment used to enhance the power of the states or the national government? b. How did the concept of "dual citizenship" figure in this case? c. What affect did this ruling have on the free enterprise system? d. Did you agree with the majority opinion or the dissent of Justice Field and Justice Bradley? Munn v. Illinois, 94 U.S. 113 (1877) Topics for discussion and study: a. In Munn was the procedural or substantive aspect of due process involved? b. Was Munn seeking the protection of the National government or the state government? c. Did this decision favor big business or government regulation. Santa Clara Co. v. Southern Pacific R.R., 118 U.S. 394 (1886) Topics for discussion and study: a. What was the significance of the Court declaring corporations "persons"? b. Is the substantive or procedural aspect of due process involved? c. Did this ruling favor big business or government regulation? d. How was the 14th Amendment used to expand the doctrine of "economic nationalism"?

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	5. (cont.) United States v. E.C. Knight Co., 156 U.S.1 (1895) Topics for discussion and study: a. In this case was big business favored by suppressing the authority of the national or state government? b. Analyze the Sherman Anti-Trust Act (1890) with the class. Especially note: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal..." c. Note the Court's narrow definition of commerce (the distinction between manufacture and shipping) as a primary and secondary function and that the Court restricted its consideration to the primary function. NOTE: This finding is no longer good law and has been reversed by N.L.R.B. v. Jones and Laughlin Steel Corp., (1937). Swift and Co. v. United States, 196 U.S. 375 (1905) Topics for discussion and study: a. Does this case overrule or distinguish itself from U.S. v. E.C. Knight? b. What does the Court hold as the primary function of the plaintiff in this case (manufacture or sales)? c. In this case did the Court favor big business or government regulation? What do you think caused a change in direction?

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	5. (cont.) Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1910) Topics for discsssion and study: a. How did the "rule of reason" apply to the Court's holding in this case? b. How does the test of "unreasonable restraint" of trade give the Court flexibility in creating law? Lochner v. New York, 198 U.S. 45 (1905) Topics for discussion and study: a. Did labor in this case seek relief through the due process clause of the 14th Amendment or through the state's police powers? b. Setting aside, for the moment, the legal implications of the case; should the government have the right to establish maximum working hours? c. Coming back to the question of constitutional law, did the Court favor the "right to contract" or the state's police powers? NOTE: The holding in this case is no longer controlling. See Muller v. Oregon, 208 U.S. 251 (1918) Hammer v. Dagenhart Topics for discussion and study: a. Can you find an analogy between this ruling and U.S. v. E.C. Knight Co. (1895)? b. Does this ruling favor big business or the government's authority to regulate? c. NOTE: The Child Labor Law which Hammer overruled was replaced by a new Child Labor Law a year after the case based on the taxing powers of Congress and was negated by Bailey v. Drexel Furniture Co. (1922)

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	c. (cont.) NOTE: U.S. v. Darby (1941) reversed Hammer, and upheld a new Act of Congress the Fair Labor Standards Act (1938) which provided for minimum wages, maximum hours for everyone engaged in interstate commerce. And prohibited child labor. The Darby decision of 1941 demonstrated the Court's new bend. With a more evenhanded approach toward labor, big business, and government regulation the Court entered upon a new era. Adkins v. Children's Hospital, 261 U.S. 525 (1923) Topics for discussion and study: a. Was the statute in question in violation of the due process clause in the 14th or 5th Amendment? b. Was the statute in question passed under the state or national police powers? NOTE: This case was overruled by West Coast Hotel Co. v. Parrish (1937). A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) Topics for discussion and study: a. What major New Deal legislation was invalidated by this case? b. What reason did Congress offer for delegating its legislative power to the Executive? c. How does the Court's definition of interstate commerce in Schechter compare to E.C. Knight (1895)? d. In your opinion should the Court have considered the urgency of the times? National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) Topics for discussion and study: a. Did this ruling favor business or labor? b. What was the Court's position on striking down an Act of Congress if it wasn't clearly unconstitutional? c. What implication(s) did this ruling have for the future of the American economy?

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	6. With regard to the above cases if done through committee reports (4 members to a panel), it might be best to structure the assignments, i.e., 1) one panel member presents the historical background or case setting (facts), 2) another panel member offers the majority decision and the rationalization(s) of that decision, 3) another panel member offers the dissent opinion(s) and the rationalizations of the dissenting members, 4) another panel member reacts to the questions given with each case under "Topics for discussion and study". Then the panel as a whole should be open to class questions. These reports could be used for grades and an evaluation of the students progress on this unit. 7. For many of the above cases the original briefs of the contending parties and the Court's opinion are available in a two series set of recordings entitled "Supreme Court Cases" catalog numbers LE 7630/30 and LE 7685/86 from (eav Lexington) Educational Audio Visual, Inc., Pleasantville, New York. Dade County #4-00040. 8. As a culminating activity the students may be asked to write a research paper showing the development of "decisional law" with regard to the development of commerce in the United States from 1866-1937. 9. Students could be asked to respond to a structured essay question on the same topic (see #8 above) indicating their understanding of the maturation of the substantive aspect of the "due process" clause citing cases in this unit to support their conclusions. Suggested Source Readings: Acheson, Patricia C. The Supreme Court. New York: Dodd, Mead & Co., 1962 (chapters 8,9,10) Bartholomew, Paul C. Leading Cases on the Constitution. New Jersey: Littlefield, Adams & Co., 1968 (paperback) James, Loenard F. The Supreme Court in American Life. New Jersey: Scott Foresman and Co., 1964 (pp. 57-86)

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	9. (cont.) Mason, Alpheus T. and Beany, William M. American Constitutional Law. New Jersey: Prentice-Hall, Inc., 1964. (chapter 6 & 9) McCloskey, Robert G. The American Supreme Court. The University of Chicago Press, 1960. (chapters 5 & 6)

GOAL 5: THE STUDENT WILL CRITICALLY EXAMINE THE FOURTEENTH AMENDMENT AND NOTE HOW IT HAS BEEN USED AS A LEGAL VEHICLE TO TRANSFER FEDERAL JUDICIAL STANDARDS UPON STATE COURTS.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
GOVERNMENT vs. INDIVIDUAL (Civil Liberties and Civil Rights) 1938-1971	A. Through case studies the student will identify the trend of "decisional law" regarding individual rights and liberties.	1. You might begin this section by passing out a survey sheet on "Where Do You Stand?" (See appendix for sample) Ask students to explain their choice. Offer no reaction to what they say. Take a class count on how each question is answered. At the end of the course you might repeat this survey to see if there is a change in attitude. 2. As an introductory lecture you might explain to the class that in our binary judicial system federal standards (based on the United States Bill of Rights) are not totally applicable to State Courts. But through a broad interpretation of the due process clause and especially the word "liberty" as used in the 14th Amendment, the Supreme Court through "selective incorporation" has gradually transferred those rights it considers "fundamental" and has made them applicable to the States, in some cases. 3. As an assignment have the class examine the Bill of Rights. With special attention to Amendments 1, 4, 5, 6, 7, and 8. 4. As a special assignment a student could be asked to find the first case that transferred one or part of one of these amendments to the States. 5. As an assignment have a student explain what is inferred by due process of law. (Note: it is found in both the 5th and 14th Amendments) 6. It should be noted that the implicit powers found in Amendment 10 are known as the police powers (i.e., the state's right to legislate in the areas of morals, health, safety, and welfare). Elicit examples from students legislation in each of these areas, e.g., the inspection of food; fire codes.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	7. Show the filmstrip: The Bill of Rights: Its Meaning Today. Bailey Films, 1959. A series of five filmstrips related to amendments 1, 4, 5, 6, and 8. 8. Show the film: The Bill of Rights: A Series, 22 minutes each, Churchill Films Justice, Liberty and Law. 9. Show the film: Bill of Rights of the United States. Dade County #1-10229. 10. Ask a student to construct a chart or prepare a transparency showing a state and federal court system. They could show this to the class with a report on how cases "go up the line."

GOAL 6: THE STUDENT WILL EXAMINE THE EFFECT OF "DECISIONAL LAW" UPON INDIVIDUAL RIGHTS AND LIBERTIES.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
GOVERNMENT VS. INDIVIDUAL (cont.)	A. The student will identify the trend of "decisional law" as related to freedom of thought, belief, and expression.	1. Through selected case studies the student will examine some of the following Court decisions related to free speech. Adderley v. Florida, 87 S.Ct. 242 (1966) DeJonge v. Oregon, 299 U.S. 353 (1937) Dennis v. United States 341 U.S. 494 (1951) Edwards v. South Carolina, 372 U.S. 229 (1963) Feiner v. New York, 340 U.S. 315 (1951) Gitlow v. New York, 268 U.S. 652 (1925) Schenck v. United States, 247 U.S. 47 (1919) Terminiello v. Chicago, 337 U.S. 1 (1949) Tinker v. Des Moines School District (1969) Yates v. United States, 354 U.S. 298 (1957) 2. Have students review the cases in this section in a case book. 3. These cases could be reported on either individually or through panel presentation (see #6 page 13). 4. The teacher could present the facts of each case (through lecture or on ditto) and ask the class how they think the Court decided the issues and why. 5. Show the film: Freedom to Speak: People of New York vs. Irving Feiner, Dade County #1-31579. 6. You may invite a guest speaker from the Civil Liberties Union, local Bar Association, or law students from the University of Miami. 7. Have students collect clippings regarding this topic and have them share these with the class. 8. Have a student analyze the various tests the Court has applied in limiting speech. (A good source book for this is: The Freedom of Speech in America. Lerner Publications Co., Minnesota 55401.) He should cite the key case for each test.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	QUESTIONS FOR STUDY AND DISCUSSION 1. What distinction did the Court make between Edwards and Adderely? 2. Which case established the "Clear and present danger" test? (Schenck) 3. In which case was the "dangerous tendency" test used? (Gitlow) 4. Compare the Court rulings of Gitlow, Feiner, and Terminiello. Do you think the Court was inconsistent in these cases? Explain. 5. What is the test for symbolic speech established by Tinker in schools? (Note: this test applies to hair and clothes as well) 6. Should people be allowed to criticize their government? Even when the nation is at war? (If you do not wish to use a case such as Schenck you could recommend reading Fortas, Concerning Dissent and Civil Disobedience and ask for student reaction to the propositions set forth. 7. Provide the students with a ditto copy of the following statement from John Stuart Mill's essay On Liberty. . . . though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely...the whole truth, it is only by the collision of adverse opinions that the truth has any chance of being supplied. a. Students could be asked to discuss and evaluate the theory of free speech suggested here. b. Students could be asked to agree or disagree with the conflict theory of Mills. 8. Have students view the film: Speech and Protest, Churchill Films, Los Angeles, California 90069. (film provides subject related dramatizations for the students to react to) CASES RELATING TO FREEDOM OF THE PRESS: Near v. State of Minnesota ex. rel. Olson, 283 U.S. 697 (1931) Examine the concept of prior restraint.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	Grosjean v. American Press Co. 297 U.S. 233 (1936) A "tax on knowledge" was as repugnant as a tax on religion. 9. Provide the students with the facts in Near and critically discuss the concept of "prior restraint" with particular attention to the fact that it has been used in Schenck (the distinction was made between peacetime and wartime). Note: other narrow limitations on speech and press have been allowed in the area of obscene publications and the use of "fighting words" that would bring about an immediate act of violence. 10. Ask students to react to the following quotation by Justice Black in the case involving the disclosure of the Pentagon Study of the Vietnam War by the Washington Post and the New York Times. . . . the issue of national security was irrelevant in the face of the absolutism of the First Amendment. . . 11. In this case the Court ruled 6 - 3 in favor of the peoples right to know because the government did not meet the "heavy burden of showing justification" for suppressing material before it is published. Either through the use of an overhead projector, the chalk board, or a ditto handout ask for student reaction to the following quotes excerpted from the majority and dissenting opinions. OPINIONS OF THE MAJORITY: "To find that the president has power to halt publication of news would wipe out the First Amendment." Justice Black

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	11. (cont.) "Every restraint issued in this case, whatever its form, has violated the First Amendment. . .Unless and until the government has clearly made out its case, the First Amendment commands that no injunction may issue." Justice Brennan ". . .in the cases before us, we are asked neither to construe specific regulations nor to apply specific laws. We are asked, instead, to perform a function that the Constitution gave to the executive, not the judiciary." Justice Stewart ". . .the ultimate issue in this case. . .is whether this court or the Congress has the power to make law. . ." Justice Marshall "These disclosures may have a serious impact. But that is no basis for sanctioning a previous restraint on the press... Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors." Justice Douglas "I am quite unable to agree that the inherent powers of the executive and courts reach so far as to authorize remedies having such a sweeping potential for inhibiting publications by the press." Justice White

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	A. (cont.)	11. (cont.) OPINIONS OF THE DISSENTERS: "We all crave speedier judicial processes, but when judges are pressured . . . the result is parody." Chief Justice Burger "The time which has been available to us, to the lower courts . . .has been wholly inadequate. . ." Justice Harlan "It is not the way for courts to adjudicate. . .issues that concern the nation's vital welfare. . ." Justice Blackmun NOTE: The dissent was unanimous with its concern regarding the time element. They felt that the test on the security issue should have been permitted before a decision was rendered. Compare this with the Douglas opinion. The students should be able to conclude from this opinion that the Court will not easily limit speed or press. NOTE: The Court in this case felt this was a Congressional power it was asked to invade. Could a case like this happen in England? Why? 12. If available the students should read: The Bill of Rights A Source Book. W. Cohen; M. Schwartz; D. Sobul.- pp. 236-245.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	B. The student will evaluate the Court's attempt to resolve the conflicting Constitutional areas of a fair trial, as expressed in the 5th Amendment and the Freedom of the Press as guaranteed in the 1st Amendment.	FREE PRESS -- FAIR TRIAL 1. The following cases could be reviewed by the students in a case book: Bridges v. California, 314 U.S. 252 (1941) Estes v. Texas, 381 U.S. 532 (1965) Irwin v. Dowd, 366 U.S. 717 (1961) Rideau v. Louisiana, 373 U.S. 723 (1963) Sheppard v. Maxwell, 384 U.S. 333 (1966) 2. A good panel discussion could be built around the following: a. The right to a public trial and the freedom of the press requires that TV be accorded access to the courtroom. b. The right to a public trial is fundamental and should not be restricted (i.e., the denial of picture taking) unless the need is proven to be compelling. c. The heightened public clamor resulting from radio and television coverage will inevitably result in prejudice. d. What kind of "fair comment" should the press be allowed before a case is completed? e. Compare the British and American viewpoint. 3. Using the series Liberty and the Law Case Studies in the Bill of Rights, Educational Book Division, Prentice-Hall, Inc., New Jersey, have the students read unit 5 "Free Press-Fair Trial." Use the teacher's manual for a guide. 4. Have the students read Fair Trial vs. Free Press in the Judgement series, Case Study No. 6, Washington, D.C.: Civic Education Service, Inc. 5. Assign a book report from each of the following: Radio, Television, and the Administration of Justice: A Documented Survey of Materials. Association of the Bar of the City of New York. Special Committee on Radio and Television. New York: Columbia University Press, 1965.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	B. (cont.)	5. (cont.) The Press in the Jury Box. Howard Felsher and Michael Rosen, New York: Macmillan, 1966. 6. You could invite a newspaperman, a representative of the TV industry, an attorney who handles criminal cases to speak on the topic Free Press-Free Trial from their point of view. Inform speakers to allow time for student questioning. 7. Students could be asked to bring in clippings from the local papers regarding criminal cases and evaluate with the class. if the printed material is prejudicial to the defendant's right to a fair trial. 8. Students might be asked to write an essay on the topic "Pre-trial publicity is of greater benefit than harm to an accused individual." Related Films for this topic: (aside from those already cited) Freedom of the Press. (20'; United States Department of the Army: 1955). Free Press v. Fair Trial by Jury: The Estes and Sheppard Cases. Encyclopedia Britannica Educational Corp. Mightier than the Sword: Zenger and Freedom of the Press. 20' BW, #1-10156. Price of Freedom. (22 min.; National Association of Manufacturers; 1949) With Liberty and Justice for All, (Part 1 & 2, 30 min. each, Dade County no. Part 1,1-30058, Part 2, 1-30060.)

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
overnment vs. Indidual (cont.)	C. The student will examine the conflict regarding the protection of individual rights and the enforcement of criminal law.	1. In the study of procedural due process special areas and selected cases were chosen. The teacher may find an issue or a case of contemporary interest which he may want to add or substitute to stimulate class interest. 2. Privilege against self-incrimination (5th Amendment). a. You could assign a report on the historical reason for the incorporation of the Fifth Amendment to our Constitution. b. Each of the following cases offers a special example of the use of the privilege against self-incrimination: Mallov v. Hogan, 378 US 1 (1964) The Court held that the due process clause of the 14th Amendment binds the states to recognize the privilege against self-incrimination found in the 5th Amendment. Marchetti v. U.S., 389 US 000 (1968) The Court ruled against the enforcement of a federal gambling tax because of the involuntary incrimination. Miranda v. Arizona, 384 US 436 (1966) Extended the privilege against self-incrimination as soon as the accused is placed under custodial interrogation. Murphy v. Waterfront Commission of New York Harbor, 378 US 52 (1964) Clarified immunity statutes: in order to waive the "privilege" the witness must be immune from direct or indirect use of the testimony in any conceivable prosecution, state or federal. Ulman v. United States, 350 US 422 (1956) To facilitate legislative investigations federal immunity statutes were upheld and immunized the witness in a nonjudicial proceeding from prosecution in a state or federal court.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
cont.)	C. (cont.)	2. (cont.) c. Special committees could be formed to report on the a o e cases. Each member of the committee should be given a specific task. For example, one member could present the issues or the facts; another could offer the majority opinion and give his reaction and/or solicit the classes reaction to it. Another member could offer the dissenting opinion and solicit reations. After hearing the facts in the case, the class may be asked to vote and then be exposed to the actual Court ruling. d. A special committee could arrange to visit with a judge and ask permission to tape the meeting. Students should go prepared with special questions related to the Fifth Amendment and self-incrimination. They could then play the tape for the class. If they cannot tape the meeting, they could take notes and report to the class. e. Using the series Liberty and the Law Case Studies in the Bill of Rights, Educational Book Division, Prentice-Hall, Inc., New Jersey, the students could read Unit 2 "The Privilege against Self-Incrimination." Use the teacher's manual for a guide. f. Have students read The Mallov Case (1966) in the Judgement series, Case Study No. 4, Washington, D.C.: Civic Education Service, Inc.. g. The students could investigate these cases in a case book and the teacher could lead a class discussion focusing on the fine points of each case. h. You could invite or have some students interview a member of the district attorney's office to determine their position on this clause. i. You could invite a member of the local police force to explain the procedure they follow since Miranda and how they feel about it. j. You could form a debate on the question of retaining the self-incrimination clause of the 5th Amendment, (i.e., resolved that the right to self-incrimination impedes the enforcement of law)

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
cont.)	C. (cont.)	2. (cont.) k. Show film: The Right To Remain Silent: The Miranda Case. Encyclopedia Britannica Educational Corp. l. You could prepare the following ditto and present a copy to each member of your class for analysis and reaction. (See Appendix B) 2. SEARCH AND SEIZURE (FOURTH AMENDMENT) a. In starting this topic it might be best to have the students acquaint themselves with some of the basic rules related to arrest, search, and seizure. b. Have a student report on the history and adoption of the Fourth Amendment. c. Have a student report on the rules or offer a lecture from the following suggested source readings: W. Cohen, et al. The Bill of Rights a Source Book (pages 160-186); W.R. LaFave. Arrest, the Decision to Take a Suspect into Custody; H.M. Smith. Arrest, Search, and Seizure. d. The following are selected cases each contributing some specific Court position on this subject. It is hoped that after their review and study the student will perceive how the Court has attempted to resolve the continuous conflict between law enforcement and individual liberty. Agnello v. United States, 269 US 20 (1925) Seizure was not incidental to the arrest and therefore ruled invalid. Aguilar v. Texas, 378 US 108 (1964) Secured warrant without sufficient probable cause. Harris v. United States, 331 US 145 (1947) Upheld the conviction of a crime on evidence obtained that was different from that of the search warrant. Mapp v. Ohio, 367 US 643 (1961) Federal standards for admissable evidence were made applicable to the states.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
cont.)	C. (cont.)	3. (cont.) Schmerber v. California, 384 US 757 (1966) Explains the delicate position of the Court on bodily search and seizure. Weeks v. United States, 232 US 383 (1914) "Exclusionary rule" established WIRETAPPING: Key Cases and Statutes Olmstead v. United States, 277 US 438 (1928) words could not be seized -- tap was outside residence Federal Communications Act (1934) Section 605 made it unlawful to "intercept and divulge" (you could intercept as long as you didn't divulge.) Thus wiretapped evidence was statutorily denied to the Federal courts, but not constitutionally denied to the state courts. Goldman v. United States, 316 US 129 (1942) Extended the Olmstead decision, bugging with a dictaphone not illegal because there was no physical entry or trespass. Silverman v. United States, 365 US 505 (1961) "Spiked mike" declared illegal because of trespass -- penetrated wall and touched a heating duct in the defendant's premises. Berger v. New York, 388 US 41 (1967) Reversed Olmstead by holding that a "conversation" is protected by the Fourth Amendment. Katz v. United States, 389 US 000 (1967) Extends the Fourth Amendment's protection beyond the concept of physical trespass to protect individual privacy "even in an area accessible to the public." (This case overrules Olmstead and Goldman) e. The teacher in reviewing the above cases with the class should emphasize that the principle of "reasonableness" and "probable cause" can only be developed through case by case law.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
ont.)	C. (cont.)	3. (cont.) f. The teacher should also note the exceptions to a warrant requirement in search and seizure (i.e., hot pursuit; search incident to an arrest; movable scene of crime; border crossings; and the looser standard of reasonable suspicion applied to the "Stop and Frisk" statutes.) g. The teacher should draw the classes attention to the interrelationship of the Fourth Amendment's self-incrimination clause and the search and seizure clause of the Fifth Amendment. (See Schmerber [1966]) h. Invite a speaker from the district attorney's office and/or the local police to explain where they stand and why with regard to wiretap and eavesdrop evidence. You may then invite some law students or a criminal defense attorney to give their position. i. You could set up a debate on the question of "Stop and Frisk" (i.e., Stop and Frisk statutes are necessary police tools to protect society). Or a debate on the topic of wiretapping. j. Ask students to find the specific provisions in Amendments Four and Five that relate to self-incrimination and search and seizure. k. In Liberty and the Law Case Studies in the Bill of Rights students could read Unit 3. l. For students interested in "electronic snooping" you could suggest the following books for reports: Carrol, John. Third Listener, Personal Electronic Espionage. New York: Dutton, 1969. Long, Edward. Intruders, the Invasion of Privacy by Government and Industry. New York: Praeger, 1967. Murphey, Walter F. Wiretapping on Trial: A Case Study in the Judicial Process. New York: Random House, 1965. Weston, Alan F. Privacy and Freedom. New York: Atheneum, 1967. m. Students should always be alert to related material in the news media and whenever applicable should make reports.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
cont.)	C. (cont.)	4. THE RIGHT TO COUNSEL (SIXTH AMENDMENT) a. Ask students to refer to the Bill of Rights and find the Amendment and provision that refers to counsel. Once again it should be emphasized that the Bill of Rights sets standards for the United States Courts (Federal Courts) only. And that it is only through judicial interpretation that it becomes applicable to state courts. b. To build background for this section you could have the students read and participate in the suggested activities of Unit I - "The Right to Counsel" in the series Liberty and the Law Case Studies in the Bill of Rights. c. You could allow students to participate in a mock trial with regard to "juvenile justice." A suggested case study to use would be In re Gault, 387 US 1 (1967). 1) Have the class acquaint themselves with the case by preparing a ditto on it or if at all possible obtain a class set of the Gault Case (1967) in the Judgement series, Case Study No. 12, Due Process and the Juvenile Court. Civic Education Service 1733 K St., N.W. Washington, D.C. 20006. 2) The mock trial should be based on the appeal to the Supreme Court. Appoint nine judges. Appoint a counsel for the petitioner, Gault. Appoint counsel for the State of Arizona. After each side presents its case have each judge write an opinion and read it to the class. They do not have to follow the actual ruling of the Court if they choose not to. At the end of the trial the class could discuss their feelings regarding juvenile procedure.(should it be the same or not?). NOTE: it might be interesting to get the class reaction to a recent (June 1971) Court decision. In a 6-3 ruling the Court gave the option to the States in offering jury trials for juvenile defendants. You might ask the class if they agree or disagree with Justice Blackmun's statement that the denial of jury

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
cont.)	C. (cont.)	4. (cont.) trials for juveniles would not violate "fundamental fairness." Remember a State only has to give you a "fair trial." 3) An excellent resource reading on Gault for the teacher can be found in Sobul, D. The Bill of Rights A Handbook. New York: Benziger Brothers, 1969. Pages 120-125. d. The following select cases will show how the Court has moved to incorporate the right to counsel as a "fundamental right." Gideon v. Wainwright, 372 US 335 (1963) Reversed Betts v. Brady (1942) and held that States should provide counsel for "indigent defendants accused of serious crimes..." Douglas v. California,372 US 353 (1963) Extends Gideon by requiring the right to counsel to indigent defendants on appeal. Escobedo v. Illinois 378 US 478 (1964) When an investigation reaches an accusatory stage and focuses on one person he must have the right to counsel. In re Gault, 387 US 1 (1967) The Court held that "equal protection of the law" was due juveniles, and to deny the due process that the 14th Amendment imposes on State criminal courts is to make an unreasonable classification of juveniles. e. Panels of three students each (1. historical background, 2. majority opinion, 3. minority opinion) could report on the above cases. f. The teacher might hold a class discussion on what is meant by a "fair trial." (See Twining v. New Jersey, (1908) and Palko v. Connecticut (1937). g. Provide class with copies of the Judgment series, Case Study No. 3, The Right to Legal Counsel: The Gideon Case. h. Show the film: Justice Under the Law - the Gideon Case

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	C. (cont.)	4. (cont.) h. (cont.) available from the audiovisual center Dade County B.P.I. No. 1-31578. i. Related readings for reports, etc.: "And the Court Said Unto Gideon." Time, October 18, 1963, p. 63. Beaney, William M. The Right to Counsel in American Courts. Ann Arbor: University of Michigan Press, 1955. Black, Hugo. One Man's Stand for Freedom: Mr. Justice Black and the Bill of Rights. New York: Knopf, 1963. Cheatham, E.E. A Lawyer When Needed. New York: Columbia University Press, 1963. Lewis, Anthony. Gideon's Trumpet. New York: Random House, 1964. Starr, Isadore. The Gideon Case. Chicago: Encyclopedia Britannica Educational Corp., 1968. j. In a lecture the teacher may want to summarize some of the important aspects of Procedural due process: 1) Grand jury indictment for a capital crime 2) No double jeopardy 3) No self-incrimination 4) Right to a speedy and public trial 5) Trial by jury 6) Impartial jury 7) To be informed of the nature and cause of the accusation 8) To be confronted with witnesses against him 9) To have compulsory process for obtaining witnesses in his favor 10) To have the assistance of counsel for his defense 11) No excessive bail 12) No cruel and unusual punishment

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	C. (cont.)	4. (cont.) k. The students could be asked to write an essay on which of the above protections could be omitted without jeopardizing a "fair trial." And if none - why not? NOTE: The Court has not nationalized (transferred) the following: the second and third amendments; the requirement of a trial by jury for civil cases; the requirement of a trial by jury for juveniles; the requirement for a public trial; the requirement against excessive bail. l. A committee of two could visit with a Juvenile court judge and inquire how the procedure differs from a regular criminal court. (No public trial - No jury trial, etc.) They may also ask about the major problems of juvenile justice today. Then they should report back to the class with their findings. m. As a culminating activity the teacher should arrange for a field trip to a Criminal court and/or a Juvenile court. n. Students who are actually interested in a law career may want to join the Miami Crime Commission's Youth Volunteer Program. Mrs. Ann Gathings is chairman of the summer program that gives youths an opportunity to see the judicial process in action. For further information check at the Metro Justice Building.
	D. The student will examine the "Judicial Curtain" established by the Court to separate Church and State.	FREEDOM OF RELIGION: SEPARATION OF CHURCH AND STATE 1. A review of the following cases and the Court's opinion should bring some kind of understanding of where and when the "Judicial Curtain" hangs. Braunfeld v. Brown, 366 US 599 (1961) Sunday closing law not unconstitutional because it is only an indirect burden on religious freedom. Cantwell v. Connecticut, 310 US 296 (1940) Proselytizing and the solicitation of funds are

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	D. (cont.)	1. (cont.) exempted by the Constitution from laws prohibiting door-to-door salesman see Beard v. City of Alexandria (1951). People v. Woody, 61 Cal. 2d 716 (1964) Distinguished from Reynolds and required the state to show a "compelling state interest" before it could deny the use of peyote (a narcotic) in a religious ceremony. Reynolds v. United States, 98 US 145 (1878) Religious belief and opinion did not provide protection for conduct which violated the law. Sherbert v. Verver, 374 US 398 (1963) Religious freedom was given precedent over the needs of the state when a Seventh Day Adventist was denied unemployment compensation because she refused to accept suitable work on Saturday, the Sabbath of her faith. Indirect restriction considered a violation of the First Amendment. (NOTE: Brownfeld [1961]) Torcase v. Watkins, 367 US 488 (1961) Religious test oath violates the First Amendment. United States v. Seeger, 380 US 163 (1965) The Court enlarges its definition of "religious belief" to include those with pacifistic training even though they lack belief in a Supreme Being (conscientious objector case). 2. The teacher can select all or some of the issues from the above cases and allow the class to discuss their position on them. Then the student can be referred to the actual Court's ruling. 3. Students could be asked to produce a research paper and look up related cases to the leads given from the above

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	D. (cont.)	3. (cont.) group. In this way a more definitive position of the Court on these issues can be determined. 4. In the series Liberty and the Law Case Studies in the Bill of Rights have the students read Units 6 and 7 and participate in the activities. 5. Examine with the class the First Amendment with specific attention to certain phrases, i.e., "free exercise of religion" is this freedom like others limited? "no establishment" clause -- what is its significance? 6. Discuss reasons for separation of church and state in the United States. 7. Have students report on countries that have had state churches in the past and tell about their political and social climate. i.e., Spain. They might examine what life is like in a state church countries today, i.e. England, Sweden, Norway, Denmark. 8. Students could report on religious conditions in our country during the colonial period. (i.e., President Nixon would not be admitted to Plymouth Colony under their anti-Quaker laws and Maryland banned Unitarians and Jews.) 9. Students could offer reports on some of the early documents, e.g., Virginia Bill of Rights (1776) Virginia Declaration of Rights George Mason A Memorial and Remonstrance -- James Madison (1785) Bill for Establishing Religious Freedom -- Thomas Jefferson (1786) 10. The following cases have been selected to show the Court's position with regard to religion in the field of education:

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	D. (cont.)	10. (cont.) Pierce v. Society of Sisters, 268 US 510 (1925) State cannot require public school attendance, but can require school attendance. Cochran v. Louisiana, 281 US 370 (1930) Under the "child benifit" theory this case makes the first serious breach of church-state concept and allows for state funds to be used to purchase textbooks, to the benefit of the individual and not the institution. Minersville School District v. Gobitis, 310 US 586 (1940) In an 8-1 decision the Court upheld the States right to require participation in a flag salute exercise even though it was contrary to religious beliefs. West Virginia State Board of Education et al. v. Barnette et al., 319 US 624 (1943) In a 6-3 decision which overruled Gobitis the Court held that a First Amendment freedom might be restricted only "to prevent grave and immediate dangers..." States cannot compel flag salutes and pledges. Everson v. Board of Education, 330 US 1 (1947) State permitted to reimburse parents for fares paid for transportation of students to parochial school. McCollum v. Board of Education, 333 US 203 (1948) "Released time issue" denied sectarian training in public school buildings. Zorach v. Clauson, 343 US 306 (1952) "Dismissed time" approved. State may release children from school to receive religious instruction not given in public buildings. Engel v. Vitale, 370 US 421 (1962) "Regent's Prayer case" The state may not require prayer recitation nondenominational or not, for it violates the Establishment of religion clause.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	D. (cont.)	10. (cont.) School District of Abington Township v. Schempp; Murray v. Curlett: 374 US 203 (1963) The state may not require Bible-reading or recitation of the Lord's Prayer as a ritual. (NOTE: the study of Bible, religion, or prayer is not prohibited) These cases were considered together; Schempp on Bible-reading and Murray on prayer. 11. From Our Living Bill of Rights series show the film Establishment of Religion: The Murray and Schempp cases from Encyclopedia Britannica Educational Corporation. 12. You might ask students to prepare position papers on the question of state aid to education referring to the "Distributive justice" theory and the "Child benefit" theory. 13. Students could read and participate in the activities offered in the Judgment series, Case No. 1 Bible-reading and prayer in public schools: The Schempp case. Civic Education Service, 1733 K. St., N.W., Washington, D.C. 20006. 14. You could organize a panel debate around the two main areas of religion and education: Area 1. Religion within the public tax supported schools, i.e., ceremonies, prayers, Bible-reading, religious garb on teachers, plays and displays. Area 2. Support or non-support of religious schools by public treasuries, i.e., books, transportation, shared facilities, etc. The panel members should acquaint themselves with the legal positions on each of these issues if any, or the pro and con positions on the issues. 15. The teacher could have various students research the cases in the educational list and report on them. Then the teacher if necessary could summarize the highlights of each case.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	D. (cont.)	16. Ask the students to react to the following quotes: "The Constitution clearly prohibits aid to the...parochial schools. I don't think there is any doubt about that." John F. Kennedy, March 1, 1961 "I am ... opposed to any program of Federal aid that would penalize a multitude of America's children because their parents choose to exercise their constitutional right to educate them in accordance with their beliefs." Francis Cardinal Spellman, March 13, 1961 "The Constitution does not demand total separation between church and state...this is not possible in an absolute sense. It is a fine, difficult and variable line, rooted distinctively in the tensions of American history." Chief Justice Warren E. Burger, March 13, 1961 17. An excellent source book for this area: Blanshard, Paul. Religion and The Schools: The Great Controversy. Boston: Beacon Press, 1963. 18. Summary: The latest ruling (June 1971) bars state payments for church schoolteachers, it leaves undetermined the propriety of various other state programs, such as educational grants to pupils or parents and "dual enrollments" in public and church schools. A score of court cases about such programs are under way. It's a mixed, touchy zone, involving a tense balance of principles, both deeply woven into the nation's heritage. George W. Cornell Associated Press Religious Writer

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	E. The students will assess the Court's attempt to reduce racial discrimination through the equal protection clause of the 14th Amendment.	RACE DISCRIMINATION: EQUAL PROTECTION OF THE LAW 1. Following are key cases related to race discrimination in selected areas: Education: Brown v. Board of Education of Topeka, 347 US 485 (1954) Ruled that separate facilities for Negroes are inherently unequal. Overruled Plessy v. Ferguson (1896) which was the origin of the separate-but-equal doctrine and established the legal justification for racial segregation. Lee v. Macon County Board of Education, 267 F. Supp. 458 (1967) Boards and officials administering public schools... have the affirmative duty under the 14th Amendment... to bring about an integrated, unitary school system. Taylor v. Board of Education of City School District of New Rochelle, 294 F. 2d 36 (1961) Gerrymandering of school boundaries violates the 14th Amendment. (it is de jure, if the state has a hand in it; it is de facto as the result of neighborhood patterns) Housing: Shelley v. Kraemer, 344 US 1 (1948) Racial restrictive covenants, may not be enforced in a state court. Extended by Reitman v. Mulkey 387 US 369 (1967) Buchanan v. Worly, 245 US 60 (1917) Laws which require segregated neighborhoods are illegal.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	E. (cont.)	1. (cont.) Interstate Commerce Boynton v. Virginia, 364 US 454 (1960) Restaurants serving interstate bus passengers may not discriminate. Mitchell v. United States, 313 US 80 (1941) Interstate railroads prohibited from practicing racial segregation. 2. QUESTIONS FOR DISCUSSION AND STUDY. a. What was the significance of the "separate-but-equal" doctrine that was declared valid in Plessy v. Ferguson (1896)? b. What psychological implication did the Court consider in the Brown decision of 1954? c. What distinction has the Court made on de facto and de jure segregation? In your opinion should a distinction be made? Is there a legal ground for making a distinction? Is there a legal ground for not making a distinction? 3. A student might report on the history of the adoption of the Fourteenth Amendment. 4. Show the film: The Lost Generation of Prince Edward County Dade County No. 1-31577. 5. In the series Liberty and the Law Case Studies in the Bill of Rights have students read and participate in the activities of Unit 10. 6. Have students listen to the Brown case in series 1 recordings Supreme Court Cases from (eav Lexington) Educational Audio Visual, Inc., Pleasantville, New York. This should stimulate a class discussion of the decision.

FOCUS	OBJECTIVE	LEARNING ACTIVITIES
(cont.)	E. (cont.)	7. For an inquiry approach use the Fenton text Comparative Political Systems. New York: Holt, Rinehart and Winston, Inc., 1967, pages 155-160. Use the teacher's manual and recording (Fenton) to support this lesson. 8. Have students research and report on the Civil Rights acts of 1957 and 1960 (which forbid racial discrimination in voting), and the stronger Civil Rights Act of 1964 and the Voting Rights Act of 1965. These reports should show how the Court's action led to legislative support. 9. In adjudicating cases under equal protection of the law the Court established the doctrine of "Reasonable Classification" in the case of Yick Wo v. Hopkins, 118 US 356 (1886). You may want to invite a lawyer or law student to explain the significance of this doctrine. 10. The teacher may want to consider some of the following topics for debate or class discussion. a. The control of private property vs. Individual Rights. b. Are criminals too protected at the expense of society? c. Has the government a legal authority to prevent job discrimination? 11. Students could investigate local conditions and report to the class their findings with regard to discrimination, if any, in housing, education, and employment. If they find any, ask if they know of a legal remedy. SUMMARY: The Brown case was perhaps the most significant decision of the Court in the twentieth century for the results of this case has permeated deeply into the judicial and moral fabric of our country. It is therefore important for the students to understand this decision for it is a prime example of how Supreme Court decisions have affected the American way of life.

MATERIALS:

1. RECOMMENDED BASIC TEXTUAL AND OTHER MATERIALS:

A. Textual

Bartholomew, Paul C. Leading Cases on the Constitution. New Jersey: Littlefield, Adams & Co., 1968.
Cohen, W. et al. The Bill of Rights A Source Book. New York: Benziger Brothers, 1968.
James, Leonard F. The Supreme Court in American Life. New Jersey: Scott, Foresman and Co., 1964.

B. Audio-Visual

Films available from the Dade County Audio-Visual Center:	Catalog Number
Bill of Rights in Action: Freedom of Speech	(new acquisitions,
Bill of Rights in Action: Freedom of Religion	no numbers)
Bill of Rights in Action: The Right to Privacy	"
Bill of Rights in Action: Equal Opportunity	"
Bill of Rights in Action: Due Process of Law	"
Bill of Rights of the United States	1-10229
Civil Rights Movement: Historic Roots	1-13504
Civil Rights Movement: Mississippi Summer Project	1-13509
Civil Rights Movement: The North	1-31699
Civil Rights Movement: The Personal View	1-31689
Civil Rights Movement: The South	1-31694
Due Process of Law Denied	1-30073
Equality Under the Law: The Lost Generation of Prince Edward County	1-31577
Freedom to Speak: People of New York vs. Irving Feiner	1-31579
Justice Under the Law: The Gideon Case	1-31578
John Marshall	1-12466
Mightier than the Sword: Zengren and Freedom of the Press	1-10156
Portrait in Black and White, Part 1	1-31649
Portrait in Black and White, Part 2	1-31654
With Liberty and Justice for All Part 1, 30' BW	1-30058
With Liberty and Justice for All Part 2, 30' BW	1-30060

Records:

Supreme Court Cases, Record Album	4-00040

MATERIALS - (cont.)

Other Films:

A Date with Liberty (16 1/2 min. Cassyd (Syd) Productions 1959. -- 917 South Tremaine Ave., Los Angeles, California 90019.)
Basic Court Procedures (13 1/2 min. color Cornet Films, Cornet Building, Chicago, Ill.)
Constitution and Censorship (25 min. Indiana University,1963)
Constitution and Censorship, The (28 min. b/w rental; Center for Mass Communication, Columbia University, 1125 Amsterdam Ave., New York.)
Free Press v.Fair Trial by Jury: The Estes and Sheppard Cases, Encyclopedia Britannica Educational Corp.

C. Other Class Material:

Judgment series of historic Supreme Court cases; Civic Education Service, 1733 K Street, N.W., Washington, D.C. 20006.
Liberty and the Law Case Studies in the Bill of Rights, Nathan Berkham Educational Book Division, Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

D. Supplemental pupil resources:

Acheson, Patricia C. The Supreme Court America's Judicial Heritage. New York: Dodd, Mead & Co., 1961.
Barnett, Richard, and Joseph Garai. Where the States Stand on Civil Rights. New York: Sterling Publishing Co., 1962.
Barth, Alan. Heritage of Liberty. New York: McGraw-Hill Book Co., 1965.
_____. Law Enforcement Versus the Law. New York: Collier - Macmillan Library Services, 1963.
Blanshard, Paul. Religion and the Schools: The Great Controversy. Boston: Beacon Press, 1963.
Bradgon, Henry W. and John C. Pittenger. The Pursuit of Justice. Canada: The Macmillan Co., 1969.
Cushman, Robert E. and Robert F. Cushman. Cases in Constitutional Law. 2nd Ed. New York: Appleton-Century-Crofts, Inc., 1963.
Emerson, Thomas Irwin and David Haver (ed.) Political and Civil Rights in the United States. 2 vols. New York: Dennis & Co., Inc., 1958.
_____. Toward A General Theory of the First Amendment. New York: Random House, 1966.
Goldberg, George. The Supreme Court in American Life: The Uses and Abuses of Judicial Review. Lexington, Massachusetts: D.C. Heath & Co., 1970.
Goldman, David J. The Freedom of the Press in America. Minnesota: Lerner Publications Co., 1967.
Johnson, Gerald W. The Supreme Court. New York: William Morrow & Co., 1962.
Kelly, Frank K. Your Freedoms: The Bill of Rights. New York: G.P. Putnam's Sons, 1964.

MATERIALS - (cont.)

Durland, Philip B. Religion and the Law of Church and State and the Supreme Court. Chicago: Aldine Publishing Co., 1962.

Lewis, Anthony. Gideon's Trumpet. New York: Random House, Inc., 1964.

_____. Portrait of a Decade: Second American Revolution. New York: Random House, Inc., 1964.

Liston, Robert A. Tides of Justice. New York: Delacorte Press, 1966.

Long, Edward V. The Intruders: The Invasion of Privacy by Government and Industry. New York: Frederich A. Praeger, 1967.

Manoni, Mary H. Our Bill of Rights. New Jersey: Scott, Foresman & Co., 1970.

Parker, Donald. et al. Civil Liberties: Case Studies and the Law. Publications in Politics and Government Series: The Lincoln Filene Center for Citizenship and Public Affairs, Tufts University, Boston: Houghton Mifflin Co., 1965.

Pleasants, Samuel A. The Bill of Rights. Merrill Studies of American Documents, No. 2. Columbus, Ohio: Charles E. Merrill Books, Inc., 1966.

Shapiro, M. Freedom of Speech: The Supreme Court and Judicial Review. New Jersey: Prentice-Hall, 1969.

Sheldon, Charles H. The Supreme Court: Politicians in Robes. Beverly Hills: Glencoe Press, 1970.

_____. Right to Counsel: The Gideon Case. Chicago, Encyclopedia Britannica Educational Corp., 1968.

_____. Right to Remain Silent: The Miranda Case. Chicago: Encyclopedia Britannica Educational Corp., 1968.

_____. Right to be Let Alone: The Mapp Case. Chicago: Encyclopedia Britannica Educational Corp., 1968.

_____. Freedom of Expression: The Feiner Case. Chicago: Encyclopedia Britannica Educational Corp., 1968.

_____. Establishment of Religion: The Murray and Schempp Cases. Encyclopedia Britannica Educational Corp., 1968.

_____. Free Press vs. Free Trial by Jury: The Estes and Sheppard Cases. Encyclopedia Britannica Educational Corp., 1968.

_____. Educational Opportunity: The Prince Edward County Case. Encyclopedia Britannica Educational Corp., 1968.

_____. Open Housing: The California Fair Housing Case. Encyclopedia Britannica Educational Corp., 1968.

Tussman, Joseph. (ed.) The Supreme Court on Racial Discrimination. New York: Oxform University Press, 1963.

Way, H. Frank. Liberty in the Balance. 2nd ed. New York: McGraw-Hill Book Co., 1967.

Equal Protection Under the Laws (30 min. Bailey Films, Inc. 6509 De Longpre Ave., Hollywood, Calif.)

Establishment of Religion: The Murray and Schempp Cases (Encyclopedia Britannica Educ. Corp., 425 North Michigan Ave., Chicago, Illinois 60611)

Free Press vs. Fair Trial by Jury: The Estes and Sheppard Cases. (Encyclopedia Britannica Educ. Corp.)

MATERIALS - (cont.)

Freedom of the Press (20 min. United States Department of the Army 1955)
Open Housing: The California Fair Housing Case (Encyclopedia Britannica Educational Corp.)
Price of Freedom (22 min. National Association of Manufacturers 1949)
Right to be Let Alone: The Mapp Case (Encyclopedia Britannica Educational Corp.)
Right to Remain Silent: The Miranda Case (Encyclopedia Britannica Educational Corp.)
Storm over the Supreme Court (Part 2, 30 min. McGraw-Hill Text-Films, 330 West 42 St., New York, N.Y. 10020)
Understanding the Law -- Equal Justice for All (12 min. b/w Encyclopedia Britannica Films, 1150 Wilmette Ave., Wilmette, Ill.)

Filmstrips:

The Bill of Rights: Its Meaning Today (color Bailey Films, 1959)
This Honorable Court: The Supreme Court of the United States, Sound, 2 pts. Guidance Associates.

Recordings:

Supreme Court Cases (Series 1 & 2 eav Lexington Educational Audio Visual, Inc., Pleasantville, N.Y.)

Transparencies:

Key Supreme Court Decisions (Parts 1 & 2 from AEVAC)

2. Teacher reference material:

Blaustein, Albert P. and Clarence Clyde Ferguson, Jr. Desegregation and the Law. New York: Random House, Inc., 1962.
Bragson, Henry W. and John C. Pittenger. The Pursuit of Justice: An Introduction to Constitutional Rights. (Teacher's edition) Canada: The Macmillan Co., 1969)
Brant, Irving. The Bill of Rights: Its Origins and Meaning. Indianapolis: Bobbs-Merrill Co., 1965.
Church & State. A Monthly Review, 1633 Massachusetts Ave., N.W., Washington, D.C. 20036.
Dash, Samuel, Robert E. Knowlton and R. Schwartz. The Eavesdroppers. New Brunswick, N.J.: Rutgers University Press, 1959.
Fraendel, Osmond K. The Supreme Court and Civil Liberties. 2nd ed. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1963.
Greenberg, Jack. Race Relations and American Law. New York: Columbia University Press, 1959.
Kinvitz, Milton R. (ed.) Bill of Rights Reader: Leading Constitutional Cases. 3rd ed. Ithaca, New York: Cornell University Press, 1965.

MATERIALS - (cont.)

Mason, Alpheus T. and William M. Beaney. American Constitutional Law: Introductory Essays and Selected Cases. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1964.

Miller, Loren. The Petitioners: The Story of the Supreme Court and the Negro. New York: Pantheon Books, Inc., 1966.

Sobul, DeAnne. The Bill of Rights: A Handbook. New York:Benziger Brothers, 1969.

Spaeth, Harold J. The Warren Court: Cases and Commentary. San Francisco: The Chandler Press, 1966.

Westin, Alan F. Privacy and Freedom. New York: Atheneum, 1967.

APPENDIX A

WHERE DO YOU STAND?

If you agree with the statement circle the A; if you disagree circle the D.

1. Any citizen or public news media should have the right to criticize or oppose any government policy or official without penalty or restraint. A D
2. Public authorities should have the right to ban books and publications from the mails, newsstands and libraries on moral grounds. A D
3. Religious exercises and programs, bible devotions and prayers should be barred from public schools. A D
4. In time of peace everyone should have the right to leave any country, including his own, and return to his country without penalty. A D
5. In their war against crime, policemen are justified in their use of wire taps and other electronic devices to listen in on private conversations. A D
6. Morality cannot and should not be legislated. A D
7. Jury trials for juveniles should be the option of the state. A D
8. The police should retain the right to "stop and frisk" in order to protect society. A D
9. "No knock" search and seizure should be extended from the District of Columbia to the entire country if it proves to be a help in the control of drug traffic. A D
10. The government should have the right to prevent the news media from making public classified material. A D
11. Owners of private business establishments selling to the public, should have the right not to sell to anyone for any reason. A D
12. The state should not be permitted to denote a day for closing a business, i.e., Sunday. A D
13. Local public opinion should be a factor in considering whether a person or group should be issued a permit to use public property for airing unpopular views. A D
14. People who apply for a government position (local, state, federal) should be required to take a loyalty oath. A D

APPENDIX B

SELF-INCRIMINATION

Facts: The U.S. Supreme Court agreed to hear the case of a Florida man sentenced to life in prison for murdering his wife after confessing the crime to a Miami policeman who masqueraded as a fellow murder suspect and spent two days in jail with him.

George William Milton was 23 in July 1958 when he was in jail after pleading not guilty to first degree murder of his wife. Officer Archie Lankford, assigned to the plain clothes division was placed in his cell and told Milton he was under investigation for the murder of a Chinese man.

Lankford attempted two or three times to get Milton to talk about the charges against him but was not successful. Finally he told Milton he had heard Milton was a "rape artist" and was also crazy. It was after that Milton, a Negro with a sixth grade education, gave the undercover detective the confession that was later retold to the jury.

Action:Milton was convicted Dec. 12, 1958. Milton contends the confession was unconstitutionally extracted from him by trickery and that he should be granted a new trial on the basis of a 1964 Supreme Court decision prohibiting use at trial of jailhouse confessions obtained by undercover agents..

The State of Florida contends that the 1964 decision should not be applied retroactively to Milton's case, which was settled six years earlier and that the confession was not gained by deception. "It was not secured by trickery but rather it resulted from a common fault -- he talked too much to the wrong person..."

Issues: (1) Should the 1964 decision be applied retroactively to Milton's case?
(2) If so, was the confession gained by trickery or did the defendant voluntarily incriminate himself?

Some General Considerations:

(1) What part(s) of the Bill of Rights is involved?
(2) Does the due process clause of the 14th Amendment figure in this case?
(3) Setting aside, for the moment, your consideration for the party involved:
    a. How do you feel about confessions secured in this manner?
    b. Do you think the government fails to protect the public safety if Milton goes free on this technicality?
    c. Do you think the Court will be more concerned with the parties to this case or with the constitutional principle involved?

NOTE: This is an acutal case but has not been adjudicated by the Court at the time of this writing. It might be interesting to see how close the class comes in predicting the outcome.